

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

UNITED STATES OF AMERICA and)	
THE STATE OF WISCONSIN)	
Plaintiffs,)	Civil Action No. 10-C-910
v.)	The Honorable William C. Griesbach
NCR CORPORATION, <i>et al.</i>)	
Defendants.)	

**PHASE 1 PRE-TRIAL STIPULATIONS BETWEEN THE PLAINTIFFS AND
DEFENDANT U.S. PAPER MILLS CORP.**

In anticipation in the upcoming Phase 1 trial in this action, the United States, the State of Wisconsin, and Defendant U.S. Paper Mills Corp (“U.S. Paper”) hereby stipulate and agree as follows:

1. Stipulations by U.S. Paper. U.S. Paper hereby stipulates, agrees, and covenants that the Plaintiffs shall not have to prove, and that U.S. Paper shall not contest, the following averments in the above-captioned action:
 - a. U.S Paper is a person within the ambit of 42 U.S.C. § 9607(a)(2) who owned and operated the U.S. Paper De Pere Facility located at 824 Fort Howard Avenue in De Pere (the “De Pere Facility”) at the time of disposal of hazardous substances at the De Pere Facility, from which there have been releases of hazardous substances to Operable Units (“OUS”) 4 and 5 of the Lower Fox River and Green Bay Superfund Site (the “Site”). U.S. Paper is a successor to USPM Corporation, which owned and operated the De Pere Facility at the time of releases of polychlorinated biphenyls from that facility to OU4 and thence to OU5. Releases

and threatened releases of such hazardous substances to OU4 and OU5 have caused the incurrence of response costs by the Plaintiffs.

- b. U.S. Paper waives all defenses that may be alleged to limit or bar relief against U.S. Paper for OU4 and OU5 under the Fifth Claim for Relief in Plaintiffs' First Amended Complaint, including, but not limited to, any defense based on divisibility or apportionment principles, any defense based on alleged actions or inaction by the Plaintiffs (including the Seventh, Eighteenth, and Nineteenth Separate Defenses in U.S. Paper's Answer), and any and all challenges to the selected remedy for OU4 or OU5 as set forth in the Records of Decisions for the Site (including the Second Separate Defense in U.S. Paper's Answer); provided, however, that the waiver in this Subparagraph 1.b shall be withdrawn as to any portion of the remedy that is judicially held to be arbitrary and capricious or otherwise not in accordance with law under CERCLA Section 113(j), 42 U.S.C. § 9613(j), as a result of a challenge by another potentially responsible party. U.S. Paper does not waive any challenges to any changed remedy for OU4 and OU5 that: (i) is a significant difference or fundamental change from the current selected remedy for OU4 and OU5; and (ii) increases the cost of the remedy, as compared to the current selected remedy for OU4 and OU5.
2. Additional Stipulations.
 - a. In April 2009, an entity known as the Lower Fox River Remediation LLC (the "LLC") entered into a contract with Tetra Tech EC, Inc. and engaged that firm to take over primary responsibility for performance of all remediation-related services required by the EPA's November 2007 Unilateral Administrative Order

for remedial action at the Site (the “UAO”). The LLC was formed solely by NCR, Appleton Papers Inc., and Arjo Wiggins Appleton (Bermuda) Ltd. U.S. Paper is not, and has never been, a member of the LLC. U.S. Paper also has no independent contractual relationship with Tetra Tech EC, Inc. for the performance of any remedial action work required by the UAO. The Plaintiffs and U.S. Paper are informed and believe that NCR Corporation (“NCR”) currently controls the LLC and the contractors engaged by the LLC.

- b. In a set of rulings in a related CERCLA case captioned *Appleton Paper Inc. v. George A. Whiting Paper Co.*, No. 08-c-16 (E.D. Wis.), the Court has determined that: (i) NCR is not entitled to contribution from U.S. Paper for NCR’s response cost and natural resource damage payments concerning the Site; and (ii) U.S. Paper is entitled to full contribution from NCR for all of its appropriate costs and damages relating to OUs 2-5, as well as any future costs or damages U.S. Paper may be deemed liable for in those portions of the Site. Those rulings are expected to be the subject of an appeal to the Seventh Circuit, but are the law of the case in that matter at the time of this stipulation.
- c. In light of the circumstances and the stipulations set forth above, and in the exercise of its enforcement discretion, the United States will initially seek performance (including an injunction based on the Fifth Claim for Relief), corrective measures, and penalties for noncompliance with the terms of the UAO from NCR and its delegates, and/or from other defendants in this action, and not from U.S. Paper. The United States reserves the right to seek injunctive relief against U.S. Paper through future proceedings if the United States determines, in

the unreviewable exercise of its enforcement discretion, that such relief has become necessary. This stipulation is not intended to waive or limit U.S. Paper's ability to substantiate its position that other defendants in this case are jointly and severally liable under CERCLA for OU4 and OU5 at the Site.

IT IS SO STIPULATED.

Phase 1 Pre-Trial Stipulations Between the Plaintiffs and Defendant U.S. Paper Mills Corp. in
United States and the State of Wisconsin v. NCR Corp., et al., No. 10-C-910 (E.D. Wis.)

FOR THE UNITED STATES OF AMERICA

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Dated: November 13, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Phase 1 Pre-Trial Stipulations to be served on the following counsel of record by the Court's Electronic Case Filing system:

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